

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**JESSICA ELLIOTT, INDIVIDUALLY  
& O/B/O L.T.T., A.J.T., & C.M.E.  
(MINORS),**

**Plaintiff,**

**v.**

**VINCENT TUCKER, *et al.*,**

**Defendants.**

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**Civil Action No. 4:22-cv-00135-O-BP**

**FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Jessica Elliott (“Plaintiff”) has filed a civil action. ECF No. 1. Resolution of preliminary matters was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b) and Special Order No. 3. ECF No. 3. The findings, conclusions and recommendation of the United States Magistrate Judge are as follows:

**FINDINGS AND CONCLUSIONS**

**A. NATURE OF THE CASE**

This case is a civil action.

**B. PARTIES**

Jessica Elliott is the Plaintiff. In the complaint, Plaintiff lists Vincent Tucker and Felicia Sheeley as Defendants. ECF No. 1.

**C. LEGAL ANALYSIS**

Plaintiff properly served the Defendants on March 19 and 21, 2022, respectively. ECF No. 7. Defendants have failed to appear in this matter. Accordingly, the Court entered an Order requiring Plaintiff to move for entry of default and default judgment against Defendants pursuant

to Fed. R. Civ. P. 55 on or before December 28, 2022. ECF No. 34. The Order further directed that failure to fully comply may result in a recommendation that this case be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for want of prosecution. *Id.* To date, Plaintiff has not complied with the Court's Order.

Rule 41(b) of the Federal Rules of Civil Procedure permits a court to dismiss an action *sua sponte* for failure to prosecute or follow orders of the court. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988). This authority flows from a court's inherent power to control its docket, prevent undue delays in the disposition of pending cases, and avoid congested court calendars. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-31 (1962). Because Plaintiff has failed to comply with this Court's orders to move for entry of default and default judgment, this case may be dismissed for failure to comply with a Court order and for lack of prosecution under Federal Rule of Civil Procedure 41(b).

#### RECOMMENDATION

It is therefore **RECOMMENDED** that all of Plaintiff's claims against Defendants Vincent Tucker and Felicia Sheeley be **DISMISSED** for failure to comply with a Court order and for lack of prosecution, without prejudice to being refiled. *See* Fed. R. Civ. P. 41(b).

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Under 28 U.S.C. § 636(b)(1), each party to this action has the right to serve and file specific written objections in the United States District Court to the United States Magistrate Judge's proposed findings, conclusions, and recommendation within fourteen (14) days after the party has been served with a copy of this document. The United States District Judge need only make a de novo determination of those portions of the United States Magistrate Judge's proposed findings, conclusions, and recommendation to which specific objection is timely made. *See* 28 U.S.C. § 636(b)(1). Failure to file by the date stated above a specific written objection to a

proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual findings and legal conclusions accepted by the United States District Judge. *See Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

**SIGNED** on January 9, 2023.

  
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Hal R. Ray, Jr.  
UNITED STATES MAGISTRATE JUDGE